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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRICKLAYERS LOCAL NO. 3 PENSION
TRUST, et al.,

Plaintiffs,

v.

DONGHUA XU, individually and dba UNITED
TILE & MARBLE CO.,

Defendant.

Case No.: C13-4593 JSW

**PLAINTIFFS' REQUEST TO
CONTINUE CASE MANAGEMENT
CONFERENCE; [~~PROPOSED~~] ORDER
THEREON**

Date: June 27, 2014
Time: 11:00 a.m.
Location: 450 Golden Gate Avenue, San
Francisco, CA
Courtroom: 11, 19th Floor
Judge: Honorable Jeffrey S. White

Plaintiffs herein respectfully submit this Request to Continue the Case Management Conference, currently scheduled for June 27, 2014, for approximately sixty (60) days. Good cause exists for the granting of the continuance as follows:

1. As the Court's records will reflect, this action was filed on October 4, 2013 to compel Defendant to comply with the terms of his Collective Bargaining Agreement.

2. Plaintiffs served the Complaint, Summons, and related court documents on Defendant on November 4, 2013. Defendant failed to file an Answer to the Complaint and Plaintiffs requested Entry of Default, which was entered by the court on December 12, 2013.

1 3. An audit of Defendant's payroll records for the time period from October 1, 2008
2 through March 31, 2013 showed that Defendant failed to report and pay required contributions for
3 several of his employees in the years 2008 and 2009.

4 4. The amount Defendant owed on the audit was revised after Plaintiffs received
5 documentation from Defendant, namely W-2 forms, which showed that a portion of the hours due
6 on the audit had been paid. The amount owed on the audit was further revised after Plaintiffs
7 received declarations from two (2) of Defendant's employees, which stated that the hours worked
8 in 2009 were spent performing home remodel work on Defendant's personal residence and did not
9 involve any work covered by the Collective Bargaining Agreement. Therefore, the employees
10 agreed that they would not pursue any fringe benefit contributions or pension credit for the hours
11 worked in 2009 on the home remodel.

12 5. Thereafter, Plaintiffs sent Defendant several letters advising him of the total
13 amount owed to Plaintiffs, including the amount remaining due on the audit, plus attorneys' fees
14 and costs incurred in this action.

15 6. Defendant continues to dispute the amount remaining due on the audit and that he
16 is liable for the attorneys' fees and costs incurred in this action.

17 7. Plaintiffs will make a final attempt to resolve this matter informally with Defendant
18 for the remaining amounts owed to Plaintiffs. Should the parties fail to reach an informal
19 resolution of this matter, Plaintiffs anticipate filing a Motion for Default Judgment against
20 Defendant.

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